

COMMISSIONERS APPROVAL

CHILCOTT

LUND *Bt*

THOMPSON *at*

TAYLOR (Clerk & Recorder)

Date.....May 3, 2006

Members Present.....Commissioner Greg Chilcott, Commissioner Betty Lund and Commissioner Alan Thompson

Minutes: Glenda Wiles

The Board held a budget hearing with the Planning Staff.

The Board met with Weed Coordinator Bryce Christiaens in regard to four Weed Grants. Commissioner Lund made a motion to sign the following Weed Grants:

- ✓ Trinity Ranch Grant
- ✓ Como Orchards
- ✓ Bitterroot Bio Control
- ✓ Stop the Knapp Grant

Commissioner Thompson seconded the motion and all voted "aye".

The Board held a budget hearing with the Road and Bridge Department.

In other business the Board met with Planning Director Karen Hughes, Planner Renee Van Hoven and Civil Counsel James McCubbin. Also present was Road Supervisor David Ohnstad. The purpose of this discussion was to address the Golf Course Road Improvement options for the development of Arrow Hill II Subdivision.

Renee stated the developer of Arrow Hill II has offered to meet their proportionate share of the road improvements in the amount of \$90,000. They calculated this amount based on engineering costs. She stated that amount could change as time goes by, due to the increase in oil and gas. She stated the Commissioners should address this amount and ask if this meets the requirement for the improvements.

Renee stated the actions the Commissioners need to address include the following:

1. Improve Golf Course Road
2. Request a variance from improving Golf Course Road and propose mitigation such as their proposal
3. Wait until the Road Department receives bids for improvements to Golf Course Road (estimated to happen summer) for the actual costs or

4. Increase the required security for Golf Course Road improvements to ensure that the security covers the actual cost to improve Golf Course Road

Their proposal does include pro rata from other subdivisions. It is based on cost estimates and the issue is the Commissioners' determining the reasonable security to accept the bond. Karen stated it is important that enough money be guaranteed for the project. Commissioner Thompson stated his concern is because DOT received cost increases of 38% on one project. He stated this proposal does not seem reasonable.

James stated he is not familiar with the agreement, but the road needs to be improved prior to final plat or covered by adequate security. The County can improve part of the road in order to follow the subdivision regulations, and the developers could improve other parts of the road. He asked if their proposal agreement is based on their engineering estimates. David stated it was.

James stated the developers of Arrow Hill II have a letter of credit and he sees a necessary amendment in that letter of credit, which addresses the cost estimates. He will re-contact Attorney Bill Van Canagan for those changes. James stated the issue is the amount of security and type of security is at the discretion of the Commissioners.

Karen stated they normally accept 125%, but the key is to make sure there is adequate security and the Commissioners might want 150% rather than 125%. Commissioner Chilcott stated the last thing he will do is subsidize the developer, but at the same time he realizes the developer looks at this in dollars and cents. James stated the letter of credit covers the actual development and the improvements to Golf Course Road.

James stated the developer wishes to pay the County a certain amount of money, then we put the pro rata shares from other developments in with a pool of money to improve the road. David stated they provided an estimate to bring the road to certain specifications. In further discussions, the Road Department began to review a Rural Special Improvement District for all citizens living along the road. They also began to explore a cost share recovery. Discussion included the project owner paying for his part of a county contract, allowing the county to let the overlay contract on Golf Course Road further east. The contract could include other roads in order to obtain a better contract unit price. It was noted the developer visited with other developers in order to discuss the proportionate shares. David stated this is an estimate only and the developers should pay the actual cost, not the projected cost.

James stated they either need payment before the road is improved or an agreement should be reached that shows the letter of credit is only used by the county if the road is not improved and paid for by the developer. James stated they need another contract because they do not want to have the road improved by the county; then have the developer meet the regulations and not pay for their development costs.

Commissioner Thompson stated the developer has the responsibility to make their share of improvements, but it is not fair for the county to make the developer wait two years to

actually pay for the costs because those costs will go up. James stated the issue comes down to making sure the letter of credit covers the cost. He stated the other issues, such as cost recovery and other developers helping to pay for the road improvement, are part of the litigation strategy that George Corn and David have been reviewing with the Attorney for Arrow Hill II Subdivision.

David stated they would like to include this road project in this year's overlay contract.

James stated if they do enter into the letter of credit, he would like to see a separate agreement for settling the potential lawsuit with the language that addresses the pro rata share for the multiple developers within the same time line. He stated someone could bring this issue up again in the future so this agreement could be utilized again, but each road and development is different.

In order to determine the proper amount required, Commissioner Chilcott stated they could utilize the 142 percentage amount the Department of Transportation (DOT) utilizes for their projects. David stated the highway projects are a larger scale than the counties, so 142% might be high.

David stated it is difficult to seek proposals for the projects they hope to do this season because of the budget process.

James will visit with George on the settlement agreement and have the agreement in place before the final plat is approved. James also noted if they do the security agreement for the road they will need to change the number (150%). Commissioner Thompson and Commissioner Chilcott concurred that is a good figure, as they are based on DOT figures for contingencies. Commissioner Lund stated she should not make comment because she and her husband own property next to this development.

In other business the Board met with Land Use Law Students for presentation of the results of the US Highway 93 South Corridor study.

The Board met with Eric Simmons in regard to the issue of impact fees for school districts and the requirements of law for County involvement. Eric presented a request that the Commissioners consider two resolutions dealing with the enactment of MCA 7-6-16, regarding the use of impact fees. Since school districts are not specifically listed the state as a 'public facility' under section 7-16-1601, section 7, (a) through (e), they would be covered under section (f) 'other facilities' and require special action by the Commissioners. Eric stated he would like the Commissioners to pass a resolution that enables school districts to implement impact fees pursuant to the terms of the statutes. Eric felt if the Commissioners move forward on this action, the County will take the lead on this issue that is going to come forward at some time in the future.

Eric also requested the Commissioners pass a resolution creating an impact fee advisory committee, which is also pursuant to the statutes (MCA 7-6-1604). This committee would be an 'arm of the government' in order to accept, review, revise and eventually

recommend to the Commissioners the approval or denial of a facility's request for an impact fee which is stated in MCA 7-6-1602. Eric also relayed that the committee would ensure the compliance and regulatory functions, as set forth in MCA 7-6-1603.

Commissioner Thompson said they understood they needed an impact study done, which could be done by Tischler/Bise Co. He stated if the impact fees go to the schools, it becomes the schools' responsibility to tag on to this study. Commissioner Thompson also stated there are issues the Commissioners need to follow up on. He noted Florence Carlton School District has a problem, in that their district lies within two counties and the agreement to have impact fees has to be a unanimous decision by Commissioners of both Counties. He stated one Commissioner in Missoula County is adamantly against any impact fees.

Eric agreed the amount of monies for public facilities might not be a great amount, i.e., if you are already collecting fees for the pro rata share, the impact fees will not put money toward the roads. He stated by the time the money filters down to the schools, he does not see it as a huge amount of money, but there are schools that would like to utilize the use of impact fees. He stated one question is, 'should the Commissioners move forward and allow all districts to do this, or just on a case-by-case basis?'

Commissioner Thompson stated Tischler/Bise indicated each school district is different and separate from other districts, and thus should be handled accordingly. Eric agreed each school district needs to do their own impact fee study, but his issue is that the Commissioners adopt the resolution, which allows each district to bring their information to the Commissioners for approval.

Commissioner Chilcott stated his concern is that the Tischler/Bise Study came in with the lowest figures of an impact fee being approximately \$8,000.00. He stated there are political limits the Commissioners are willing to go, i.e., with an impact on the market. He stated they do not want to be like other states, such as California with permit fees, including the impact fees at \$27,000. That is why many people come here to get away from those fees and regulations.

James commented on the committee, stating the government that intends to have an impact fee shall have a committee. So, if you intend to charge impact fees, you should form a committee. James stated his issue is in regard to the way the law was written, as it is restrictive on what is eligible for impact fees: 10-year issue and what can be charged. He stated he did not think the Commissioners could pass a resolution now that gives them the assurance of money they are spending on the fee study. The problem with the language in the law is that the impact fee resolution must be in front of the Commissioners and that should all be one vote. He did not think this Commission could bind future boards on this decision, as this Board make-up will change at the first of the year. In other words, any decision today could not bind future Board Members. He stated what the Commissioners can do is to pass a Resolution of Intent expressing their opinion.

Eric felt that resolution of intent is not a bad thing. He stated most people support the impact fees, but he sees some defects in the statutes, i.e., leaving school districts out of the statutes.

Commissioner Chilcott stated he understands the school district not wanting to do a \$30,000 study; then not have the ability to move forward on the collection. James stated the question is, 'do they do the study this year or wait until the new Commissioner is sitting on the board so you have a unanimous decision for at least two years?

Wayne Stanford of Lone Rock School District stated they discussed this with the Fire District Board of Trustees. He stated they set some monies aside, and after looking at the Tischler Bise report, the fire department did not qualify. But Wayne disagreed and stated the law is specific and does allow fire departments to gain from the impact fees. Schools are funded crazily, as the law does not allow the development to charge a higher fee than existing service. It is the same for operational maintenance. Lone Rock has to lay off a teacher next year and they cannot pay for a study with no guarantees. Therefore, it all falls on the Commissioners. Wayne stated this should be done in a uniform manner. Building permits are an obvious way to collect fees, because they have to treat everyone under the law equally. Therefore building permits are necessary. Tischler Bise did an impact fee feasibility study analysis. Wayne felt there is very little to be gained by impact fees. He stated the Tischler study shows that the money cannot be used on the operations and maintenance of the schools and that is what they need. Wayne said the Commissioners should go on record to support the study, so they can see support before they spend the money on the study.

Commissioner Thompson stated the law does not allow them to deny a subdivision based on education. The legislators need to change those criteria, allowing them the ability to use education as a mitigation of the conditions. Commissioner Chilcott agreed the Commissioners should advertise for the committee members for the impact fees. James stated the law has some specific requirements and he will need to review this (such as one representative member of the development community), also there is no definition of the development community. The next meeting for discussion and decision of this committee establishment will be Monday, May 15th.